#### ARZONA DEPARTMENT OF AGRICULTURE

#### SUBSTANTIVE POLICY STATEMENT

#### PSD 5.05, Guidelines for Issuing a Citation

A.R.S. § 41-1091(B) Notice

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

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DIRECTOR'S SIGNATURE

This policy supersedes the Plant Services Division Guidelines for Issuing a Citation policy distributed in June of 1993.

The Department has the authority granted to it under Arizona Revised Statutes, Chapter 7, Article 2, Enforcement, Section 3-931 which states, "power granted pursuant to this chapter to any person may be exercised by a deputy, inspector or agent of the authorized person."

Any person in whom the enforcement of any provision of this Article is vested has the power of a peace officer as to such enforcement.

Section 3-931, Arrests without warrant, Confiscation of plants. A peace officer or any officer or employee of the Department of Agriculture may, in the enforcement of this Article, make arrests without warrant for a violation of this Article which he may witness, and may confiscate plants or parts thereof belonging to the protected group when unlawfully taken, transported possessed, sold or otherwise in violation of this Article.

#### **FORMS**

1. An Arizona Traffic Ticket and Complaint, ADA-PSD 0027 (Exhibit 1), may be issued for a violation of the Native Plant Law (or other Plant Services Division Law). The form has four copies. The titles of the copies are located in the upper right hand corner of each sheet.

The <u>Original Complaint</u> and the <u>Court Report to ADA</u> copies are to be filed with the court within 24 hours of issuance.

The <u>Law Enforcement</u> copy is retained by the issuing officer and attached to the Investigation Report.

The <u>Violator/Defendant</u> copy is given to the defendant.

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> The disposition of the trial will be recorded on the reverse side of the Original Complaint and retained by the court.

> The Court Report to ADA will be returned by the court with the disposition information at the end of the trial.

2. Chain of Custody Log, ADA-PSD 0022 Supplement A (Exhibit 2). If physical evidence is to be legally acceptable and admissible in court, the inspector must first document and certify where, when and how the evidence was collected and how each item was identified (place of occurrence, date and time, case number and signature of person collecting the evidence); and, second, the integrity of the evidence must continuously be maintained. By this is meant that continuity of possession must have been maintained intact from the time the evidence was collected.

This form will provide a custody log when evidence is passed from one person to another.

- 3. Investigation Report, ADA-PSD 0022 (Exhibit 3). This report is to be completed after a Citation has been issued. A copy of this report, along with a copy of the Citation enforcement is to be submitted to the Program Manager within two working days of issuance of the Citation.
- 4. Warning Hold, ADA-PSD 0032 (Exhibit 4), will be used when securing evidence. The front side of the Hold tag will be the date and time the tag was affixed to the evidence, and the enforcing officer's name and phone number.

The reverse side of the Hold tag is the reason for holding, indicating the Law or Rule violated.

Pursuant to ARS 3-931(C) a peace officer may confiscate, or seize by the attachment of a "Warning Hold" Notice, any protected native plant found in violation. It is unlawful to move or

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dispose of the plants held under a "Warning Hold" Notice, except with the written permission of the enforcing officer.

5. Abstract of Court Record, ADA-PSD 0021 (Exhibit 5), must be filled out as much as possible and submitted to the Program Manager within two days of issuance of the Citation. The remainder will be filled in upon completion of the trial.

To properly prepare the groundwork for issuance of any Citation, please do the following:

- 1. Contact the Justice and City Courts within your assigned area and tell the judge or court officials that you will be citing violators of the Native Plant Law into their court. (Make an appointment).
- 2. Provide a copy of the Law and Rules to the judge and court officials. Explain the Law and problems the state is having concerning violations of the Law.
- 3. Ask the court officials for their jurisdictional boundaries and for the times and dates the judge will hear arraignments on the violations. You may have several courts in your assigned area.
- 4. Contact your County Attorneys and make them aware that you will be issuing Citations for violations of the Native Plant Law. (Make an appointment). You want to establish cordial relations and continuity with the attorneys.

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#### GUIDELINES FOR ISSUING A CITATION

Under the Native Plant Law, an officer may make an arrest without a warrant when a felony or misdemeanor is committed in the presence of an officer, however, in most cases a Citation may be issued when the offense is a misdemeanor.

An officer can arrest without a warrant on a felony violation when probable cause is present. The offense does not have to be committed in the presence of an officer. An officer may write a Citation through collective evidence and probable cause that a misdemeanor has been committed. The offense does not have to be committed in the presence of an officer.

The inspector may determine a violation has been committed in the following manner:

- 1. A person or persons digging, removing or cutting protected native plants or wood without a permit and/or tags;
- 2. A person or persons who have protected plants or wood in their possession without a permit and/or tags;
- 3. A person or persons transporting protected native plants or wood without a permit and/or tags;
- 4. A person or persons mutilating or destroying protected native plants without a permit.

These violations can be observed on the highway, at the swap meets, in the desert, on private, state or federal lands, on a street corner sales area, on a private residence property landscape, on a commercial property landscape, or on vehicles transporting the protected plants or wood.

The inspector will properly identify themself when stopping or accosting a suspected violator or violators. Once the inspector has established that there is a violation, the next step is to determine what person or persons committed the violation by asking questions of the suspected person or persons, thereby making an identification of the persons involved and asking for some identification (drivers license) to establish who they are. Once the person or persons involved have been identified, the inspector will then inform the person or persons of the violation and that they are going to be cited.

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The inspector will then proceed to issue the Citation (Exhibit 1), filling out all the required information with the specific charge and citing the A.R.S. Section that applies. If more than one violation has occurred, they can be indicated on one Citation. Most of the required information may be obtained from the suspect's valid drivers license. If the driver's license is used as a means of identification, the inspector should ask the suspect if the address listed on the license is their current address. The inspector will then establish the correct location of the violation (mile post number, Section, Township and Range, street address) to establish the correct court jurisdiction. The proper time, date and place for the suspect to appear in court is entered on the Citation, provided that the time specified in the notice to appear is at least five days after issuing the Citation. When requesting the suspect to sign the Citation, remind the suspect that their signature on the Citation is not a plea of guilt or innocence but a promise to appear in court to make a plea within the time and place specified by the Citation. also a condition of release. Pursuant to ARS 13-3903, the suspect in order to secure his release, shall give his written promise to appear. If the suspect does not sign the Citation, he cannot be released. Call for backup. The responding officer will place the suspect in custody. At this time the inspector will secure the evidence, depending on the situations listed as follows:

- 1. Confiscate plants or wood from the suspects, that can be unloaded or loaded into the inspector's vehicle.
- 2. If the amount of plants or size of plants or the amount of wood is too much, instruct the suspect to proceed to the nearest approved holding yard or law enforcement office where the vehicle and evidence can be secured and arrangements made to remove and store the evidence.
- 3. Pictures should be taken if at all possible, of the evidence, the violation location with time, date, location and photographer's name. In the case of vandalization or destruction, pictures will be the inspector's most important evidence.

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4. Sometimes in securing evidence, the inspector may have to call for assistance to help secure or transport the evidence. The Chain of Custody (Exhibit 2), must be maintained and properly recorded. If the evidence is handled by more than one inspector, a Chain of Custody should be used to establish custody responsibility until the Citation is finalized in court. Failure to maintain a Chain of Custody record in a court of law may make the evidence inadmissible.

After filling out the Citation and while the violators and any witnesses are still at the scene, the Investigation Report Form (Exhibit 3), will be filled out listing the name and address of all witnesses.

- 5. The Investigation Report should completely describe the following:
  - A. Time and location of the violation(s)
  - B. Who was the violator or violators, with full description of those violators.
    - 1) D.O.B.
    - 2) Name and address
    - 3) Drivers license number picture of subject
    - 4) Vehicle license number
    - 5) Description of vehicle year, color, model, make and type, and any equipment attached
    - 6) Clothes worn by subject
    - 7) Any identifying marks and location on violator
      - a) Scars
      - b) Facial hair, beard, mustache, etc.
      - c) Tattoos description and location

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- d) Size approximate height and weight
- Anything else the inspector may e) observe about the violator that help them to better identify that person in court. Limp, digit missing, etc. court appearance postponed by lawyers for a long period of time the violator, in order to provide the judge with a good impression, and also as a means to cause confusion in identification, may dress up, clean up, shave a beard or mustache or both, dye hair or hair to confuse prosecutor's witnesses.
- f) The inspector can never have enough evidence, the more the better if taken and secured properly.
- 6. When an inspector receives information of a possible violation from a person that doesn't want to be identified, the inspector will list the information on the investigation sheet as an anonymous caller. The inspector should never state to a violator the name of any witness or allow them access to that information. Some violators may take retaliatory action against a witness.
- 7. What was the weather like?
- 8. Describe the location, desert, home landscaping, etc.
- 9. If it is a destruction or mutilation violation, what did they do it with; gun, vehicle, knife, sticks, etc.
- 10. List type and amount of protected plants or wood involved.

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11. All articles of evidence should be secured under lock and key.

- A. Small articles are placed in a sealed container with the inspector's signature and date on the seal with an Identification Number.
- B. Larger articles, tools, planted plants, wood, cradles, etc., should be handled as follows:
  - 1) Plants will be tagged with a Hold tag (Exhibit 4). Write the name of the violator, date and case number with indelible ink. If there is a large amount of plants, attach a Hold tag on each plant.
  - 2) Cradles and tools are tagged individually and stored in a secure place.
  - 3) Wood may be stacked or piled. Surveyor's tape is wrapped around the wood with a Hold tag attached to it.
- 12. No article or articles of evidence can be disposed of until there is a release from the court.
- 13. Evidence, plants, wood, etc. stored in the Department holding yard by other law enforcement agencies is not to be moved or removed except by approval of that agency.

After issuing the Citation, the Abstract of Court Record of Violation (Exhibit 5, Form ADA-PSD 0021) must be filled out, leaving blank the plea, judgement, and probation portion. The remainder will be filled in upon completion of the trial.

A copy of the entire case report is then mailed to the Program Manager within two days of the incident.

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The Arizona Traffic Ticket and Complaint (Citation) is written as follows:

- 1. The Citation forms are pre-printed with complaint numbers. These numbers should be referred to when writing your Investigation Report.
- 2. When a violation is witnessed and a Citation is issued at the scene, no case number is needed. If, through collected evidence, a Citation is issued, the case number will become the number assigned to the investigation. All investigation numbers will be issued by the Program Manager.
- 3. Social Security Number, military status, and driver's license number of the defendant.
- 4. Check  $(\sqrt{})$  the DLP box if the defendant's vehicle has a disabled license plate.
- 5. The state in which the driver's license was issued.
- 6. The class of the driver's license, i.e., Class D, M, etc.
- 7. Circle the type of driver's license endorsement.
- 8. If the case was referred by another agency, enter the Incident Report number if applicable.
- 9. <u>Defendant</u>: Name: first, middle, last name (usually taken from the driver's license). Ask the person: "Is this your current name?" Some people go by nick names or aliases. If the defendant is a Junior or a first, second, or third, it is important to make the distinction.
- 10. Residence Address: get complete address and zip code. If taking information from the driver's license, ask the person: "Is this your current address?" Correct address is very important, as failure to appear in court may necessitate issuing a warrant.
- 11. Residence and business phone numbers.

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12. Vital Statistics: information should include: sex, weight, height, color of eyes and hair, and origin. (See standard NCIC abbreviations page 5.13. The information is taken from the driver's

license.

13. Date of Birth (D.O.B.) is essential in establishing record.

14. Business Address: add this information if the defendant conducts business in this state.

15. Vehicle Identification: color, year, make, model, style. In addition, note dents or other identifiable marking.

Plate number, state of origin and expiration date.

- 16. Month, day, year, time, the physical location, and the county where the violation occurred.
- 17. Multi-charge Section (A-E) You may write up to five different violations on one Complaint form. Indicate what section of the law was violated, i.e., 3-908, circling the A.R.S. box, the violation title and check (√) the criminal box for all Native Plant Law violations.

The docket number, disposition code, date of disposition and sanction will be completed by the court.

- 18. You must appear at:
  Judge (Justice of the Peace or the City Magistrate)
  the court's telephone number. At (address) is the
  location of the court. City or town and zip code.
  For court number see County Court Code Numbers on
  pages 5.14 and 5.15.
- 19. Court Date: month, day, year and time. The date to appear must be at least five days after arrest. Check (V) the criminal box that states: without admitting guilt, I promise to appear as directed hereon.

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Pursuant to A.R.S. 13-3903, the person to whom the Citation is issued must sign his or her name as a condition of release and as a promise to appear.

- 20. The issuing officer signs the form as the complainant and enters Personal Service Number (PSN) or badge number.
- 21. Instruct the defendant to read the reverse side of the defendant's copy.
- 22. For distribution of the Citation, see page 5.1 Forms of this policy.
- 23. The Program Manager needs to review all Investigation Reports before the case goes to trial.

Make sure all Investigation Reports and Citation forms are legible.

When writing a citation and gathering other information, be sure to confiscate and secure all evidence. Complete the form ADA-PSD 0020 and give a copy to the defendant as a receipt (except in cases of search warrants).

District Office should check with ADOT, Game and Fish, and the Sheriff's Office for areas to secure native plants.

Chain of Custody must be maintained when handling evidence.

Keep the Program Manager and the District Supervisor advised of all activities regarding the investigation and court action.

#### CITATIONS

To assist in the preparation of correct and accurate citations, the following guidelines are to be followed by all field personnel.

- 1. All entries will be printed clearly.
- 2. NCIC abbreviations WILL BE USED where applicable.
- 3. Proper names and street addresses WILL NOT be abbreviated.
- 4. <u>Court Date and Time</u> will be shown in numbers only, standard 12-hour time (NOT military time).
- 5. <u>Violation time</u> will be shown in military time, NOT standard 12-hour time. (Example: 1:00 P.M. = 1300 hours).
- 6. <u>Height & Weight</u> will be entered to the nearest round number (no fractional portions).
- 7. <u>Blank information</u> "NONE" will be entered in EACH SPACE for which information is not known or cannot be obtained.

STANDARD NCIC ABBRI	<u>CTAIVE</u>	ONS - STATES	· · · · · ·	HAIR COLOR CODE
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0244	Willcox City Court	0708	Northeast Phoenix Justice Court
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0303	Fredonia Justice Court	0716	West Phoenix Justice Court
0304	Sedona Justice Court	0717	Wickenburg Justice Court
0305	Page Justice Court	0718	Central Phoenix Justice Court
0306	Coconino East Justice Court	0720	South Mesa/Gilbert Justice Court
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0342	Williams City Court	0742	Fountain Hills Magistrate Court
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#### EXHIBIT 1

## Arizona Traffic Ticket and Complaint Arizona Department of Agriculture

#### ORIGINAL COMPLAINT

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nin				I promise to app						Victi				Victim N		
	□w	ithout admi	tting respe	onsibility, I ackno	owledge receipt o	of this co	omplaint.							defendant comr plaint upon the		
,				•	•											
							<del></del>		Comple	inant		<del></del>		·····	PSN	·

#### CHAIN OF CUSTODY LOG

'Investigation	No.	Da	ate
2			chibit No.
,			Inspector
ITEM NO.	QUANTITY		DESCRIPTION
,			
Widence Coll	ected By		Time
DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
	Print Name	Print Name	
	Sign Name	Sign Name	
The first of the second of the	Print Name	Print Name	
	sign Name	Sign Name	
	Print Name	Print Name	The state of the s
	sign Name	Sign Name	
Comments			

INVESTIGATION REPORT NPI # DATE & TIME REPORTED TYPE OF OFFENSE STATUTE NO. COUNTY JE & TIME OF OCCURRENCE LOCATION OF OCCURRENCE WHERE VIOLATION WAS DISCOVERED VICTIM: STATE OF ARIZONA (OR OTHER) COLOR YEAR MAKE BODY STYLE **LICENSE NO.** STATE OTHER I.D. REGISTERED OWNER ADDRESS PHONE NO. NAME ADDRESS · HOME PHONE TBUSINESS PHONE S BUSINESS ADDRESS SEX RACE/NATIONALITY DATE OF BIRTH I HT INT THAIR TEYES ALIASES, MARKS, TATTOOS, ETC. SOCIAL SECURITY NO. DRIVER'S LICENSE NO. DERSON WHO REPORTED VIOLATION TO ADA ADDRESS PHONE NO. AST ALL OTHER SUSPECTS - WITNESSES: EVIDENCE COMPLETE DESCRIPTION FOUND BY WHERE . FOUND WHEN FOUND DISPOSITION OF EVIDENCE MIRANDA RIGHTS-WHO WAS ADVISED ADVISED BY WHERE ADVISED WHEN ADVISED SUSPECT'S QUOTED RESPONSE NOPSISE NARRATIVE - NEXT PAGE

ADA-PSD-0022

ADA-PSD 0032

# STATE OF ARIZONA DEPARTMENT OF AGRICULTURE PHOENIX, ARIZONA

ABSTRACT OF COU	RT RECORD OF VIOLATION	
Defendant's Name		
Doing Business As		
Address		
Offense Arizona Revised	Statutes and Regulations	
Hearing Date	_19 Section(s) Violate	ed
Court Location and Address		
Judge's Name and Phone No		
·lea		
Judgement		
Probation (Details)		
Citation No.		
Date Issued		
Docket No.		
REMARKS		
		···
1		

ADA-PSD 0021 REV. 10/21/91